

APPENDIX A

Congestion Management Program Legislation**CHAPTER 2.6. CONGESTION MANAGEMENT****65080.**

- (a) Except as provided in subdivisions (c) and (d), each transportation planning agency designated under subdivision (a), (b), (c), or (d) of Section 29532 shall prepare a regional transportation plan and a regional transportation improvement program directed at the achievement of a coordinated and balanced regional transportation system, including, but not limited to, mass transportation, highway, railroad, maritime, and aviation facilities and services. The plan shall be action-oriented and pragmatic, considering both the short- and long-term future, and shall present clear, concise policy guidance to local and state officials. The program shall support and be consistent with the plan. Each transportation planning agency shall consider and incorporate, as appropriate, the transportation plans of cities, counties, districts, private organizations, and state and federal agencies.
- (b) Each transportation planning agency shall adopt a regional transportation plan which includes consideration of the factors specified in Section 134 of Title 23 of the United States Code, and, if it prepares a regional transportation improvement program, shall adopt a program. Prior to adoption, a public hearing shall be held, after the giving of notice of the hearing by publication in the affected county or counties pursuant to Section 6061. Prior to the adoption of the program, the governing body or the designated policy committee of the transportation planning agency shall consider the relationship between the program and the adopted plan. Each transportation planning agency shall adopt and submit, not later than April 1, 1990, and December 1 of each odd-numbered year thereafter, an updated regional transportation improvement program as specified in Section 65082, and biennially, not later than June 1, 1993, and December 1 of each even-numbered year thereafter, an updated regional transportation plan to the California Transportation Commission and the Department of Transportation.
- (c) A transportation planning agency designated under subdivision (b) of Section 29532 may have the regional transportation plan for the area under its jurisdiction prepared by the Department of Transportation by adopting a resolution to that effect prior to July 1, 1978. In that case, Section 65080.5 applies to the agency.
- (d) The regional transportation improvement program shall be prepared and adopted only by the transportation planning agencies and by county transportation commissions representing urbanized areas of 50,000 or more in population. The department shall prepare the programs, on a state transportation district basis, for all other areas of the state.

65080.1. Once preparation of a regional transportation plan has been commenced by or on behalf of a designated transportation planning agency, the Secretary of the Business, Transportation and Housing Agency shall not designate a new transportation planning agency pursuant to Section 29532 for all or any part of the geographic area served by the originally designated agency unless he or she first determines that redesignation will not result in the loss to California of any substantial amounts of federal funds.

65080.2. A transportation planning agency which has within its area of jurisdiction a transit development board established pursuant to Division 11 (commencing with Section 120000) of the Public Utilities Code shall include, in the regional transportation improvement program prepared pursuant to Section 65080, those elements of the transportation improvement program prepared by the transit development board pursuant to Section 120353 of the Public Utilities Code relating to funds made available to the transit development board for transportation purposes.

65080.5

- (a) For each area for which a transportation planning agency is designated under subdivision (c) of Section 29532, or adopts a resolution pursuant to subdivision (c) of Section 65080, the Department of Transportation, in cooperation with the transportation planning agency, and subject to subdivision (e), shall prepare the regional transportation plan, and the updating thereto, for that area and submit it to the governing body or designated policy committee of the transportation planning agency for adoption. Prior to adoption, a public hearing shall be held, after the giving of notice of the hearing by publication in the affected county or counties pursuant to Section 6061. Prior to the adoption of the regional transportation improvement program by the transportation planning agency if it prepared the program, the transportation planning agency shall consider the relationship between the program and the adopted plan. The adopted plan and program, and the updating thereto, shall be submitted to the California Transportation Commission and the department pursuant to subdivision (b) of Section 65080.
- (b) In the case of a transportation planning agency designated under subdivision (c) of Section 29532, the transportation planning agency may prepare the regional transportation plan for the area under its jurisdiction pursuant to this chapter, if the transportation planning agency, prior to July 1, 1978, adopts by resolution a declaration of intention to do so.
- (c) In those areas that have a county transportation commission created pursuant to Section 130050 of the Public Utilities Code, the multicounty designated transportation planning agency, as defined in Section 130004 of that code, shall prepare the regional transportation plan and the regional transportation improvement program in consultation with the county transportation commissions.
- (d) Any transportation planning agency which did not elect to prepare the initial regional transportation plan for the area under its jurisdiction, may prepare the updated plan if it adopts a resolution of intention to do so at least one year prior to the date when the updated plan is to be submitted to the California Transportation Commission.

- (e) If the department prepares or updates a regional transportation improvement program or regional transportation plan, or both, pursuant to this section, the state-local share of funding the preparation or updating of the plan and program shall be calculated on the same basis as though the preparation or updating were to be performed by the transportation planning agency and funded under Sections 99311, 99313, and 99314 of the Public Utilities Code.

65081. The regional transportation plan shall include:

- (a) A policy element that considers important transportation issues and describes the desired short- and long-range transportation goals, and pragmatic objective and policy statements. The objective and policy statements shall consider probable funding constraints.
- (b) An action element that describes the programs and actions necessary to implement the plan and assigns implementation responsibilities. The action element shall also include a program for developing intracity and intercity bicycle programs. The action element shall include all congestion management programs adopted pursuant to Chapter 2.6 (commencing with Section 65088).
- (c) A financial element that summarizes the cost of plan implementation, compares these costs to a realistic projection of available revenues, and includes estimates of expected surplus and deficits. It shall contain recommendations for the allocation of funds and for the development of new sources of revenues if needed.

65081.1.

- (a) After consultation with other regional and local transportation agencies, each transportation planning agency whose planning area includes a primary air carrier airport shall, in conjunction with its preparation of an updated regional transportation plan pursuant to Section 65081, include an airport ground access improvement program.
- (b) The program shall address the development and extension of mass transit systems, including passenger rail service, major arterial and highway widening and extension projects, and any other ground access improvement projects the planning agency deems appropriate.
- (c) Highest consideration shall be given to mass transit for airport access improvement projects in the program.
- (d) If federal funds are not available to a transportation planning agency for the costs of preparing or updating an airport ground access improvement program, the agency may charge the operators of primary air carrier airports within its planning area for the direct costs of preparing and updating the program. An airport operator against whom charges are imposed pursuant to this subdivision shall pay the amount of those charges to the transportation planning agency.

65081.3

- (a) As a part of its adoption of the regional transportation plan, the designated county transportation commission, regional transportation planning agency, or the Metropolitan Transportation Commission may designate special corridors, which may include, but are not limited to, adopted state highway routes, which, in consultation with the Department of Transportation, cities, counties, and transit operators directly impacted by the corridor, are determined to be of statewide or regional priority for long-term right-of-way preservation.
- (b) Prior to designating a corridor for priority acquisition, the regional transportation planning agency shall do all of the following:
 - (1) Establish geographic boundaries for the proposed corridor.
 - (2) Complete a traffic survey, including a preliminary recommendation for transportation modal split, which generally describes the traffic and air quality impacts of the proposed corridor.
- (3) Consider the widest feasible range of possible transportation facilities that could be located in the corridor and the major environmental impacts they may cause to assist in making the corridor more environmentally sensitive and, in the long term, a more viable site for needed transportation improvements.
- (c) A designated corridor of statewide or regional priority shall be specifically considered in the certified environmental impact report completed for the adopted regional transportation plan required by the California Environmental Quality Act, which shall include a review of the environmental impacts of the possible transportation facilities which may be located in the corridor. The environmental impact report shall include a survey within the corridor boundaries to determine if there exist any of the following:
 - (1) Rare or endangered plant or animal species.
 - (2) Historical or cultural sites of major significance.
 - (3) Wetlands, vernal pools, or other naturally occurring features.
- (d) The regional transportation planning agency shall designate a corridor for priority acquisition only if, after a public hearing, it finds that the range of potential transportation facilities to be located in the corridor can be constructed in a manner which will avoid or mitigate significant environmental impacts or values identified in subdivision (c), consistent with the California Environmental Quality Act and the state and federal Endangered Species Acts.
- (e) Notwithstanding any other provision of this section, a corridor of statewide or regional priority may be designated as part of the regional transportation plan only if it has previously been specifically defined in the plan required pursuant to Section 134 and is consistent with the plan required pursuant to Section 135 of Title 23 of the United States Code.

65082.

- (a) A seven-year regional transportation improvement program shall be prepared, adopted, and submitted to the California Transportation Commission on or before December 15 of each odd-numbered year, updated every two years, pursuant to Sections 65080 and 65080.5 and the guidelines adopted pursuant to Section 14530.1, to include projects and programs proposed to be funded, in whole or in part, by funds which are any of the following:
 - (1) For flexible congestion relief projects, as defined in Section 164.2 of the Streets and Highways Code.
 - (2) For urban rail transit and commuter rail projects. Major projects shall include an escalated current cost updated to at least November 1 of the year of submittal, and be listed by relative priority, taking into account need, delivery milestone dates, as defined in Section 14525.5, and the availability of funding.
- (b) Congestion management programs adopted pursuant to Section 65089 shall be incorporated into the regional transportation improvement program submitted to the commission by December 15 of each odd-numbered year.
- (c) The incorporation of the congestion management program into the regional transportation improvement program required to be submitted to the commission by December 1, 1991, may be delayed for a period not to exceed one year if an environmental impact report is required to be prepared for the congestion management program pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code, and the following conditions are met:
 - (1) The agency, as defined by Section 65088.1, adopts written findings that the congestion management program cannot be incorporated into the regional transportation improvement program by December 1, 1991, due to the time required to prepare an environmental impact report pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.
 - (2) The agency adopts a schedule for development of the congestion management program that will result in its adoption no later than December 1, 1992, and submits a report to the Legislature by July 1, 1992, on the progress of complying with this section.
 - (3) The agency, county, and cities take every action necessary to assure the congestion management program will be adopted by December 1, 1992.
- (d) If the incorporation of the congestion management program into the regional transportation improvement program is delayed pursuant to subdivision (c), both of the following shall apply:
 - (1) Any project included in the state transportation improvement program or the traffic systems management program prior to December 1, 1992, which is otherwise required to be included in the congestion management program, pursuant to subdivision (e), but which is not included in the congestion management program to be incorporated into the regional transportation improvement program pursuant to subdivision (b), shall be deleted from the state transportation improvement program or the traffic systems management program.

- (2) Local projects which are otherwise required to be included in the congestion management program, pursuant to subdivision (e), may be included in the regional transportation improvement program to be submitted to the California Transportation Commission by December 1, 1991. Any local project which is included in the regional transportation improvement program after December 1, 1991, but prior to December 1, 1992, which is otherwise required to be included in the congestion management program, but which is not included in the congestion management program to be incorporated into the regional transportation improvement program pursuant to subdivision (b), shall be deleted from the regional transportation improvement program.
- (e) Local projects not included in a congestion management program shall not be included in the regional transportation improvement program. Projects and programs adopted pursuant to subdivision (a) shall be consistent with the seven-year capital improvement program adopted pursuant to paragraph (5) of subdivision (b) of Section 65089, and the guidelines adopted pursuant to Section 14530.1.
- (f) Other projects may be included in the regional transportation improvement program if listed separately.
- (g) Unless a county not containing urbanized areas of over 50,000 population notifies the Department of Transportation by July 1 that it intends to prepare a regional transportation improvement program for that county, the department shall, in consultation with the affected local agencies, prepare the program for all counties for which it prepares a regional transportation plan.
- (h) The regional transportation improvement program may not change the project delivery milestone date of any state project as shown in the prior adopted state transportation program without the consent of the department or other agency responsible for the project delivery.
- (i) The requirements for incorporating a congestion management program into a regional transportation improvement program specified in this section do not apply in those counties that do not prepare a congestion management program in accordance with Section 65088.3.

65083. As part of implementation of the demonstration program established pursuant to Section 14045 of the Government Code, the regional transportation planning agency preparing the seven-year regional transportation improvement program pursuant to Section 65082 shall consider those exclusive mass transit guideway projects where the applicant and the local entity responsible for land use decisions have entered into a binding agreement to promote high density residential development within one-half mile of a mass transit guideway station. Any project selected by the agency which is located in a demonstration site shall be considered for inclusion in the regional transportation improvement program. This section shall not preclude the agency from applying the criteria for making awards which may be required or permitted pursuant to other provisions of law.

65084. In order to insure coordinated planning, development, and operation of transportation systems of all types and modes, the board of supervisors of each county may appoint a county director of transportation, and specify the extent of the responsibilities of such officer.

65085. The board of supervisors may designate any county officer who is properly qualified to serve as the county director of transportation.

65086.

- (a) The Department of Transportation shall carry out long-term state highway system planning to identify future highway improvements and new transportation corridors through route concept reports.
- (b) The department, in conjunction with transportation planning agencies, shall develop specific project listings for the initiation of project studies reports resulting in project candidates for inclusion in regional transportation plans and the state transportation improvement program as required by Section 14529.

65086.4.

- (a) In addition to the regional transportation improvement program, the entity adopting that program may prepare and adopt a future development list of capacity increasing state highway projects in priority order for purposes of the initiation of project studies reports. If the list is prepared within the area of the multicounty designated transportation planning agency, as defined in Section 130004 of the Public Utilities Code, each county transportation commission shall adopt, for the area within its jurisdiction, a future development list of capacity increasing state highway projects in priority order. The future development list adopted by the multicounty transportation planning agency shall include the lists separately adopted by each county transportation commission. These lists shall be limited to the regional summation of funds available for capacity-improvement projects in the adopted state transportation improvement program when distributed according to the county minimum formula defined in Section 188.8 of the Streets and Highways Code.
- (b) The list shall be submitted to the Department of Transportation and shall be used solely for the purpose of preparing the project studies report. The list shall not be subject to review and approval by the California Transportation Commission and shall not be included in the state transportation improvement program.

65086.5.

- (a) To the extent that the work does not jeopardize the delivery of the projects in the adopted state transportation improvement program, the Department of Transportation shall prepare a project studies report for each capacity increasing state highway project which is listed on the regional list submitted to the department pursuant to subdivision (b) of Section 65086.4. The project studies report shall include the project-related factors of limits, description, scope, costs, and the amount of time needed for initiating construction. If a regional list is not consistent with the financial limitation of subdivision (a) of Section 65086.4, projects for that region may be limited in priority order to the funding limit for that region.

- (b) The Department of Transportation shall seek assistance from regional and local transportation agencies or other entities for the preparation of project studies reports for projects contained in the list prepared, adopted, and submitted pursuant to Section 65086.4 when the report cannot be completed so as to allow a project to be eligible for inclusion in the upcoming state transportation improvement program. Whenever project studies reports are performed by an entity other than the Department of Transportation, the department shall review and approve the report.
- (c) The Department of Transportation may be requested to prepare a project studies report for a capacity-increasing state highway project which is being proposed for inclusion in a future state transportation improvement program. The department shall have 30 days to determine whether it can complete the requested report in a timely fashion. If the department determines that it cannot complete the report in a timely fashion, the requesting entity may prepare the report. Upon submission of a project studies report to the department by the entity, the department shall complete its review and provide its comments to that entity within 60 days from the date of submission. The department shall complete its review and final determination of a report which has been revised to address the department's comments within 30 days following submission of the revised report.
- (d) The Department of Transportation, in consultation with representatives of cities, counties, and regional transportation planning agencies, shall prepare draft guidelines for the preparation of project studies reports by all entities. The guidelines shall address the development of reliable cost estimates. The department shall submit the draft guidelines to the California Transportation Commission not later than July 1, 1991. The commission shall adopt the final guidelines not later than October 1, 1991. Guidelines adopted by the commission shall apply only to project studies reports commenced after October 1, 1991.

65088. The Legislature finds and declares all of the following:

- (a) Although California's economy is critically dependent upon transportation, its current transportation system relies primarily upon a street and highway system designed to accommodate far fewer vehicles than are currently using the system.
- (b) California's transportation system is characterized by fragmented planning, both among jurisdictions involved and among the means of available transport.
- (c) The lack of an integrated system and the increase in the number of vehicles are causing traffic congestion that each day results in 400,000 hours lost in traffic, 200 tons of pollutants released into the air we breathe, and three million one hundred thousand dollars (\$3,100,000) added costs to the motoring public.
- (d) To keep California moving, all methods and means of transport between major destinations must be coordinated to connect our vital economic and population centers.
- (e) In order to develop the California economy to its full potential, it is intended that federal, state, and local agencies join with transit districts, business, private and environmental interests to develop and implement comprehensive strategies needed to develop appropriate responses to transportation needs.

65088.1. As used in this chapter the following terms have the following meanings:

- (a) Unless the context requires otherwise, “regional agency” means the agency responsible for preparation of the regional transportation improvement program.
- (b) Unless the context requires otherwise, “agency” means the agency responsible for the preparation and adoption of the congestion management program.
- (c) “Commission” means the California Transportation Commission.
- (d) “Department” means the Department of Transportation.
- (e) “Local jurisdiction” means a city, a county, or a city and county.
- (f) “Parking cash-out program” means an employer-funded program under which an employer offers to provide a cash allowance to an employee equivalent to the parking subsidy that the employer would otherwise pay to provide the employee with a parking space. “Parking subsidy” means the difference between the out-of-pocket amount paid by an employer on a regular basis in order to secure the availability of an employee parking space not owned by the employer and the price, if any, charged to an employee for use of that space. A parking cash-out program may include a requirement that employee participants certify that they will comply with guidelines established by the employer designed to avoid neighborhood parking problems, with a provision that employees not complying with the guidelines will no longer be eligible for the parking cash-out program.
- (g) “Urbanized area” has the same meaning as is defined in the 1990 federal census for urbanized areas of more than 50,000 population.
- (h) “Interregional travel” means any trips that originate outside the boundary of the agency. A “trip” means a one-direction vehicle movement. The origin of any trip is the starting point of that trip. A roundtrip consists of two individual trips.
- (i) “Multimodal” means the utilization of all available modes of travel that enhance the movement of people and goods, including, but not limited to, highway, transit, nonmotorized and demand management strategies including, but not limited to, telecommuting. The availability and practicality of specific multimodal systems, projects, and strategies varies by county and region in accordance with the size and complexity of different urbanized areas.
- (j) “Level of service standard” is a threshold that defines a deficiency on the congestion management program highway and roadway system which requires the preparation of a deficiency plan. It is the intent of the Legislature that the agency shall use all elements of the program to implement strategies and actions that avoid the creation of deficiencies and to improve multimodal mobility.
- (k) “Performance measure” is an analytical planning tool that is used to quantitatively evaluate transportation improvements and to assist in determining effective implementation actions, considering all modes and strategies. Use of a performance measure as part of the program does not trigger the requirement for the preparation of deficiency plans.

65088.3. This chapter does not apply in a county in which a majority of local governments, collectively comprised of the city councils and the county board of supervisors, which in total also represent a majority of the population in the county, each adopt resolutions electing to be exempt from the congestion management program.

65088.5. Congestion management programs, if prepared by county transportation commissions and transportation authorities created pursuant to Division 12 (commencing with Section 130000) of the Public Utilities Code, shall be used by the regional transportation planning agency to meet federal requirements for a congestion management system, and shall be incorporated into the congestion management system.

65089.

- (a) A congestion management program shall be developed, adopted, and updated biennially, consistent with the schedule for adopting and updating the regional transportation improvement program, for every county that includes an urbanized area, and shall include every city and the county. The program shall be adopted at a noticed public hearing of the agency. The program shall be developed in consultation with, and with the cooperation of, the transportation planning agency, regional transportation providers, local governments, the department, and the air pollution control district or the air quality management district, either by the county transportation commission, or by another public agency, as designated by resolutions adopted by the county board of supervisors and the city councils of a majority of the cities representing a majority of the population in the incorporated area of the county.
- (b) The program shall contain all of the following elements:
 - (1) (A) Traffic level of service standards established for a system of highways and roadways designated by the agency. The highway and roadway system shall include at a minimum all state highways and principal arterials. No highway or roadway designated as a part of the system shall be removed from the system. All new state highways and principal arterials shall be designated as part of the system. Level of service (LOS) shall be measured by Circular 212, by the most recent version of the Highway Capacity Manual, or by a uniform methodology adopted by the agency that is consistent with the Highway Capacity Manual. The determination as to whether an alternative method is consistent with the Highway Capacity Manual shall be made by the regional agency, except that the department instead shall make this determination if either (i) the regional agency is also the agency, as those terms are defined in Section 65088.1, or (ii) the department is responsible for preparing the regional transportation improvement plan for the county.
 - (B) In no case shall the LOS standards established be below the level of service E or the current level, whichever is farthest from level of service A. When the level of service on a segment or at an intersection fails to attain the established level of service standard, a deficiency plan shall be adopted pursuant to Section 65089.4.

- (2) A performance element that includes performance measures to evaluate current and future multimodal system performance for the movement of people and goods. At a minimum, these performance measures shall incorporate highway and roadway system performance, and measures established for the frequency and routing of public transit, and for the coordination of transit service provided by separate operators. These performance measures shall support mobility, air quality, land use, and economic objectives, and shall be used in the development of the capital improvement program required pursuant to paragraph (5), deficiency plans required pursuant to Section 65089.4, and the land use analysis program required pursuant to paragraph (4).
 - (3) A travel demand element that promotes alternative transportation methods, including, but not limited to, carpools, vanpools, transit, bicycles, and park-and-ride lots; improvements in the balance between jobs and housing; and other strategies, including, but not limited to, flexible work hours, telecommuting, and parking management programs. The agency shall consider parking cash-out programs during the development and update of the travel demand element.
 - (4) A program to analyze the impacts of land use decisions made by local jurisdictions on regional transportation systems, including an estimate of the costs associated with mitigating those impacts. This program shall measure, to the extent possible, the impact to the transportation system using the performance measures described in paragraph (2). In no case shall the program include an estimate of the costs of mitigating the impacts of interregional travel. The program shall provide credit for local public and private contributions to improvements to regional transportation systems. However, in the case of toll road facilities, credit shall only be allowed for local public and private contributions which are unreimbursed from toll revenues or other state or federal sources. The agency shall calculate the amount of the credit to be provided. The program defined under this section may require implementation through the requirements and analysis of the California Environmental Quality Act, in order to avoid duplication.
 - (5) A seven-year capital improvement program, developed using the performance measures described in paragraph (2) to determine effective projects that maintain or improve the performance of the multimodal system for the movement of people and goods, to mitigate regional transportation impacts identified pursuant to paragraph (4). The program shall conform to transportation-related vehicle emission air quality mitigation measures, and include any project that will increase the capacity of the multimodal system. It is the intent of the Legislature that, when roadway projects are identified in the program, consideration be given for maintaining bicycle access and safety at a level comparable to that which existed prior to the improvement or alternation. The capital improvement program may also include safety, maintenance, and rehabilitation projects that do not enhance the capacity of the system but are necessary to preserve the investment in existing facilities.
- (c) The agency, in consultation with the regional agency, cities, and the county, shall develop a uniform data base on traffic impacts for use in a countywide transportation computer model and shall approve transportation computer models of specific areas within the county that will be used by local jurisdictions to determine the quantitative impacts of development on the circulation system that are based on the countywide model and standardized modeling assumptions and conventions. The computer models shall be consistent with the modeling methodology adopted

by the regional planning agency. The data bases used in the models shall be consistent with the data bases used by the regional planning agency. Where the regional agency has jurisdiction over two or more counties, the data bases used by the agency shall be consistent with the data bases used by the regional agency.

- (d) (1) The city or county in which a commercial development will implement a parking cash-out program that is included in a congestion management program pursuant to subdivision (b), or in a deficiency plan pursuant to Section 65089.4, shall grant to that development an appropriate reduction in the parking requirements otherwise in effect for new commercial development.
- (2) At the request of an existing commercial development that has implemented a parking cash-out program, the city or county shall grant an appropriate reduction in the parking requirements otherwise applicable based on the demonstrated reduced need for parking, and the space no longer needed for parking purposes may be used for other appropriate purposes.
- (e) Pursuant to the federal Intermodal Surface Transportation Efficiency Act of 1991 and regulations adopted pursuant to the act, the department shall submit a request to the Federal Highway Administration Division Administrator to accept the congestion management program in lieu of development of a new congestion management system otherwise required by the act.

65089.1

- (a) For purposes of this section, “plan” means a trip reduction plan or a related or similar proposal submitted by an employer to a local public agency for adoption or approval that is designed to facilitate employee ridesharing, the use of public transit, and other means of travel that do not employ a single-occupant vehicle.
- (b) An agency may require an employer to provide rideshare data bases; an emergency ride program; a preferential parking program; a transportation information program; a parking cash-out program, as defined in subdivision (f) of Section 65088.1; a public transit subsidy in an amount to be determined by the employer; bicycle parking areas; and other noncash value programs which encourage or facilitate the use of alternatives to driving alone. An employer may offer, but no agency shall require an employer to offer, cash, prizes, or items with cash value to employees to encourage participation in a trip reduction program as a condition of approving a plan.
- (c) Employers shall provide employees reasonable notice of the content of a proposed plan and shall provide the employees an opportunity to comment prior to submittal of the plan to the agency for adoption.
- (d) Each agency shall modify existing programs to conform to this section not later than June 30, 1995. Any plan adopted by an agency prior to January 1, 1994, shall remain in effect until adoption by the agency of a modified plan pursuant to this section.
- (e) Employers may include disincentives in their plans that do not create a widespread and substantial disproportionate impact on ethnic or racial minorities, women, or low-income or disabled employees.

- (f) This section shall not be interpreted to relieve any employer of the responsibility to prepare a plan that conforms with trip reduction goals specified in Division 26 (commencing with Section 39000) of the Health and Safety Code, or the Clean Air Act (42 U.S.C. Sec. 7401 et seq.).
- (g) This section only applies to agencies and employers within the South Coast Air Quality Management District.

65089.2

- (a) Congestion management programs shall be submitted to the regional agency. The regional agency shall evaluate the consistency between the program and the regional transportation plans required pursuant to Section 65080. In the case of a multicounty regional transportation planning agency, that agency shall evaluate the consistency and compatibility of the programs within the region.
- (b) The regional agency, upon finding that the program is consistent, shall incorporate the program into the regional transportation improvement program as provided for in Section 65082. If the regional agency finds the program is inconsistent, it may exclude any project in the congestion management program from inclusion in the regional transportation improvement program.
- (c)
 - (1) The regional agency shall not program any surface transportation program funds and congestion mitigation and air quality funds pursuant to Section 182.6 and 182.7 of the Streets and Highways Code in a county unless a congestion management program has been adopted by December 31, 1992, as required pursuant to Section 65089. No surface transportation program funds or congestion mitigation and air quality funds shall be programmed for a project in a local jurisdiction that has been found to be in nonconformance with a congestion management program pursuant to Section 65089.5 unless the agency finds that the project is of regional significance.
 - (2) Notwithstanding any other provision of law, upon the designation of an urbanized area, pursuant to the 1990 federal census or a subsequent federal census, within a county which previously did not include an urbanized area, a congestion management program as required pursuant to Section 65089 shall be adopted within a period of 18 months after designation by the Governor.
- (d)
 - (1) It is the intent of the Legislature that the regional agency, when its boundaries include areas in more than one county, should resolve inconsistencies and mediate disputes which arise between agencies related to congestion management programs adopted for those areas.
 - (2) It is the further intent of the Legislature that disputes which may arise between regional agencies, or agencies which are not within the boundaries of a multicounty regional transportation planning agency, should be mediated and resolved by the Secretary of Business, Housing and Transportation Agency, or an employee of that agency designated by the secretary, in consultation with the air pollution control district or air quality management district within whose boundaries the regional agency or agencies are located.
- (e) At the request of the agency, a local jurisdiction that owns, or is responsible for operation of, a trip-generating facility in another county shall participate in the congestion management program of the county where the facility is located. If a dispute arises involving a local jurisdic-

tion, the agency may request the regional agency to mediate the dispute through procedures pursuant to subdivision (d) of Section 65089.2. Failure to resolve the dispute does not invalidate the congestion management program.

65089.3. The agency shall monitor the implementation of all elements of the congestion management program. The department is responsible for data collection and analysis on state highways, unless the agency designates that responsibility to another entity.

The agency may also assign data collection and analysis responsibilities to other owners and operators of facilities or services if the responsibilities are specified in its adopted program. The agency shall consult with the department and other affected owners and operators in developing data collection and analysis procedures and schedules prior to program adoption. At least biennially, the agency shall determine if the county and cities are conforming to the congestion management program, including, but not limited to, all of the following:

- (a) Consistency with levels of service standards, except as provided in Section 65089.4.
- (b) Adoption and implementation of a program to analyze the impacts of land use decisions, including the estimate of the costs associated with mitigating these impacts.
- (c) Adoption and implementation of a deficiency plan pursuant to Section 65089.4 when highway and roadway level of service standards are not maintained on portions of the designated system.

65089.4

- (a) A local jurisdiction shall prepare a deficiency plan when highway or roadway level of service standards are not maintained on segments or intersections of the designated system. The deficiency plan shall be adopted by the city or county at a noticed public hearing.
- (b) The agency shall calculate the impacts subject to exclusion pursuant to subdivision (f) of this section, after consultation with the regional agency, the department, and the local air quality management district or air pollution control district. If the calculated traffic level of service following exclusion of these impacts is consistent with the level of service standard, the agency shall make a finding at a publicly noticed meeting that no deficiency plan is required and so notify the affected local jurisdiction.
- (c) The agency shall be responsible for preparing and adopting procedures for local deficiency plan development and implementation responsibilities, consistent with the requirements of this section. The deficiency plan shall include all of the following:
 - (1) An analysis of the cause of the deficiency. This analysis shall include the following:
 - (A) Identification of the cause of the deficiency; and
 - (B) Identification of the impacts of those local jurisdictions within the jurisdiction of the agency that contribute to the deficiency. These impacts shall be identified only if the calculated traffic level of service following exclusion of impacts pursuant to subdivision (f) indicates that the level of service standard has not been maintained, and shall be limited to impacts not subject to exclusion.

- (2) A list of improvements necessary for the deficient segment or intersection to maintain the minimum level of service otherwise required and the estimated costs of the improvements.
- (3) A list of improvements, programs, or actions, and estimates of costs, that will (A) measurably improve multimodal performance, using measures defined in paragraphs (1) and (2) of subdivision (b) of Section 65089, and (B) contribute to significant improvements in air quality, such as improved public transit service and facilities, improved nonmotorized transportation facilities, high occupancy vehicle facilities, parking cash-out programs, and transportation control measures. The air quality management district or the air pollution control district shall establish and periodically revise a list of approved improvements, programs, and actions that meet the scope of this paragraph. If an improvement, program, or action on the approved list has not been fully implemented, it shall be deemed to contribute to significant improvements in air quality. If an improvement, program, or action is not on the approved list, it shall not be implemented unless approved by the local air quality management district or air pollution control district.
- (4) An action plan, consistent with the provisions of Chapter 5 (commencing with Section 66000), that shall be implemented, consisting of improvements identified in paragraph (2), or improvements, programs, or actions identified in paragraph (3), that are found by the agency to be in the interest of the public health, safety, and welfare. The action plan shall include a specific implementation schedule. The action plan shall include implementation strategies for those jurisdictions that have contributed to the cause of the deficiency in accordance with the agency's deficiency plan procedures. The action plan need not mitigate the impacts of any exclusions identified in subdivision (f). Action plan strategies shall identify the most effective implementation strategies for improving current and future system performance.
- (d) A local jurisdiction shall forward its adopted deficiency plan to the agency within 12 months of the identification of a deficiency. The agency shall hold a noticed public hearing within 60 days of receiving the deficiency plan. Following that hearing, the agency shall either accept or reject the deficiency plan in its entirety, but the agency may not modify the deficiency plan. If the agency rejects the plan, it shall notify the local jurisdiction of the reasons for that rejection, and the local jurisdiction shall submit a revised plan within 90 days addressing the agency's concerns. Failure of a local jurisdiction to comply with the schedule and requirements of this section shall be considered to be nonconformance for the purposes of Section 65089.5.
- (e) The agency shall incorporate into its deficiency plan procedures, a methodology for determining if deficiency impacts are caused by more than one local jurisdiction within the boundaries of the agency.
 - (1) If, according to the agency's methodology, it is determined that more than one local jurisdiction is responsible for causing a deficient segment or intersection, all responsible local jurisdictions shall participate in the development of a deficiency plan to be adopted by all participating local jurisdictions.
 - (2) The local jurisdiction in which the deficiency occurs shall have lead responsibility for developing the deficiency plan and for coordinating with other impacting local jurisdiction.

tions. If a local jurisdiction responsible for participating in a multi-jurisdictional deficiency plan does not adopt the deficiency plan in accordance with the schedule and requirements of paragraph (a) of this section, that jurisdiction shall be considered in nonconformance with the program for purposes of Section 65089.5.

- (3) The agency shall establish a conflict resolution process for addressing conflicts or disputes between local jurisdictions in meeting the multi-jurisdictional deficiency plan responsibilities of this section.
- (f) The analysis of the cause of the deficiency prepared pursuant to paragraph (1) of subdivision (c) shall exclude the following:
 - (1) Interregional travel.
 - (2) Construction, rehabilitation, or maintenance of facilities that impact the system.
 - (3) Freeway ramp metering.
 - (4) Traffic signal coordination by the state or multi-jurisdictional agencies.
 - (5) Traffic generated by the provision of low-income and very low income housing.
 - (6) (A) Traffic generated by high-density residential development located within one-fourth mile of a fixed rail passenger station, and

(B) Traffic generated by any mixed use development located within one-fourth mile of a fixed rail passenger station, if more than half of the land area, or floor area, of the mixed use development is used for high density residential housing, as determined by the agency.
- (g) For the purposes of this section, the following terms have the following meanings:

“High density” means residential density development which contains a minimum of 24 dwelling units per acre and a minimum density per acre which is equal to or greater than 120 percent of the maximum residential density allowed under the local general plan and zoning ordinance. A project providing a minimum of 75 dwelling units per acre shall automatically be considered high density.

“Mixed use development” means development which integrates compatible commercial or retail uses, or both, with residential uses, and which, due to the proximity of job locations, shopping opportunities, and residences, will discourage new trip generation.

65089.5

- (a) If, pursuant to the monitoring provided for in Section 65089.3, the agency determines, following a noticed public hearing, that a city or county is not conforming with the requirements of the congestion management program, the agency shall notify the city or county in writing of the specific areas of nonconformance. If, within 90 days of the receipt of the written notice of nonconformance, the city or county has not come into conformance with the congestion management program, the governing body of the agency shall make a finding of nonconformance and shall submit the finding to the commission and to the Controller.

- (b)
 - (1) Upon receiving notice from the agency of nonconformance, the Controller shall withhold apportionments of funds required to be apportioned to that nonconforming city or county by Section 2105 of the Streets and Highways Code.
 - (2) If, within the 12-month period following the receipt of a notice of nonconformance, the Controller is notified by the agency that the city or county is in conformance, the Controller shall allocate the apportionments withheld pursuant to this section to the city or county.
 - (3) If the Controller is not notified by the agency that the city or county is in conformance pursuant to paragraph (2), the Controller shall allocate the apportionments withheld pursuant to this section to the agency.
- (c) The agency shall use funds apportioned under this section for projects of regional significance which are included in the capital improvement program required by paragraph (5) of subdivision (b) of Section 65089, or in a deficiency plan which has been adopted by the agency. The agency shall not use these funds for administration or planning purposes.

65089.6. Failure to complete or implement a congestion management program shall not give rise to a cause of action against a city or county for failing to conform with its general plan, unless the city or county incorporates the congestion management program into the circulation element of its general plan.

65089.7. A proposed development specified in a development agreement entered into prior to July 10, 1989, shall not be subject to any action taken to comply with this chapter, except actions required to be taken with respect to the trip reduction and travel demand element of a congestion management program pursuant to paragraph (3) of subdivision (b) of Section 65089.

65089.9. The study steering committee established pursuant to Section 6 of Chapter 444 of the Statutes of 1992 may designate at least two congestion management agencies to participate in a demonstration study comparing multimodal performance standards to highway level of service standards. The department shall make available, from existing resources, fifty thousand dollars (\$50,000) from the Transportation Planning and Development Account in the State Transportation Fund to fund each of the demonstration projects. The designated agencies shall submit a report to the Legislature not later than June 30, 1997, regarding the findings of each demonstration project.

65089.10. Any congestion management agency that is located in the Bay Area Air Quality Management District and receives funds pursuant to Section 44241 of the Health and Safety Code for the purpose of implementing paragraph (3) of subdivision (b) of Section 65089 shall ensure that those funds are expended as part of an overall program for improving air quality and for the purposes of this chapter.